

**Sec. 38-42. CBPO, Chesapeake Bay Preservation Area Overlay District.**

- (a) *Purpose.* ...
- (b) *Overlay concept.* ...
- (c) *Authority.* ...
- (d) *Conflict with other regulations.* ...
- (e) *Definitions.* The following words and terms used within this section have the following meanings, unless the context clearly indicates otherwise. Words and terms not defined herein but defined in section 38-2 shall be given the meanings set forth therein.

*Application for Development within a Chesapeake Bay Preservation Area - Chesapeake Bay Preservation Area or CBPA ...*

*Best management practices or BMP's ...*

*Buffer area ...*

*Chesapeake Bay Preservation Area ...*

*Chesapeake Bay Interdisciplinary Review Team* is a team composed of City of Falls Church staff, to include a Senior or Principal Planner from the Development Services Department, the City Engineer, and the City Arborist.

*Critical Root Zone (CRZ)* is the area beneath a tree that may extend well beyond the spread of its branches. The size of the critical root zone is a function of tree type, size, health and it's response to construction stresses. The size of the critical root zone should be adjusted according to the specific factors listed above and site conditions, but generally can be calculated as one foot per inch of diameter at breast height (DBH) of the tree to be preserved. For example, a ten (10) inch diameter at breast height tree would have a critical root zone of ten (10) feet from the tree trunk in all directions.

*Development* is any alteration of the natural environment of improved and unimproved real estate which requires the application and approval of a site plan, subdivision plat or development plan related to regulated land disturbance activities and/or requiring permits, including, but not limited to, demolition, grading, filling, excavation, and building.

*Diameter at breast height (DBH)* is the diameter of the tree measured outside the bark at a point four and one-half (4.5) feet above the ground.

*Drip line* is a vertical projection to the ground surface from the furthest lateral extent of a tree or shrub's canopy.

*Floodplain -Redevelopment...*

*Resource Management Area or RMA* is that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area. Resource Management Areas include land types that, if improperly used or developed, have the

potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

*Resource Protection Area or RPA* is that component of the Chesapeake Bay Preservation Area as defined in section 38-42(i)(1). Resource Protection Areas consist of sensitive lands that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

*Riparian Buffers Modification and Mitigation Guidance Manual* published in September 2003, written and published by the Chesapeake Bay Local Assistance Department. The intent of the manual is to provide guidance and clarification for Tidewater local governments, at their request, regarding the section of the Chesapeake Bay Preservation Act describing buffer exemptions and modifications.

*Shrub* is any self-supporting woody plant which usually has multiple trunks. For preservation and canopy coverage calculation purposes, a shrub shall measure no less than five (5) feet in height above ground level.

*Substantial alteration* is the expansion or modification of a building or development that would result in a disturbance of land exceeding an area of twenty-five hundred (2,500) square feet in the Resource Management Area only.

*Tree* is any self-supporting woody plant which usually provides one main trunk and produces a more or less distinct and elevated head with many branches. For preservation purposes and canopy coverage calculation purposes, a tree shall measure no less than two (2) inches in DBH.

*Tree canopy* means the branches, leaves, or other foliage from any tree measuring no less than two (2) inches in DBH and shrubs measuring no less than five (5) feet in height.

*Tree canopy coverage* is the area surrounding a tree or shrub located within the drip line.

*Use* is an activity on the land other than development including, but not limited to, commercial, residential, and industrial.

*Water-dependent facility* is a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to, the intake and outfall structures of water and sewer treatment plants and storm sewers, and public water-oriented recreation areas.

*Woody vegetation includes all trees and shrubs.*

- (f) *Areas of applicability*
- (g) *Use regulations.*

(h) *Lot size.*

(i) *Chesapeake Bay Preservation Area Designation.*

- (1) Resource Protection Area designation. Resource Protection Areas shall consist of lands described herein, that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters.

The Resource Protection Area shall consist of:

- a. Nontidal wetlands connected by surface flow and contiguous to waterbodies with perennial flow;
  - b. Such other lands considered by the City to meet some or all of the criteria described in section 38-42(i)(1) and considered to be necessary to protect the quality of State waters. Other lands to be included within the RPA are waterbodies with perennial flow, all natural stream channels, and man-made open stream channels, as generally identified on the City's Chesapeake Bay Preservation Area (CBPA) map; and
  - c. A vegetated buffer area not less than one hundred (100) feet in width located adjacent to and landward of the components listed in section 38-42(i)(1) a. and b., and along both sides of any water body with perennial flow.
- (2) Interpretation of Resource Protection Area Boundaries and Delineation by the applicant. The City's adopted Chesapeake Bay Preservation Area (CBPA) map shows only the general location of the RPA and should be consulted by persons contemplating activities, modifications, or encroachments in the RPA. The specific boundaries of the RPA for each site or parcel shall be determined by the applicant as part of a water quality impact assessment, grading plan, demolition permit, building permit, site plan, subdivision plat, or any other application for land disturbance, and delineated on all submitted plans, subject to approval of the City Engineer and in accordance with this section. The identification of Resource Protection Area boundaries shall be established by a land surveyor authorized to practice in the Commonwealth of Virginia, and be based on reliable, scientifically valid, and specific information, as approved by the City Engineer, from actual field evaluations of the site. The City of Falls Church CBPA map shall be used only as a guide to the general location of Resource Protection Areas. The accuracy of the RPA boundary delineation submitted by the applicant, when in question, shall be verified by the City Engineer.
- (3) Resource management area designation and interpretation of boundaries.
- a. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

- b. The Resource Management Area shall include all land within the City of Falls Church corporate boundary that is not designated as a Resource Protection Area.

(j) *Permitted Development or Uses, Modifications, and Encroachments within Resource Protection Areas.*

(1) Permitted Development within RPAs. Land development may be allowed in the Resource Protection Area, subject to the approval of the Chesapeake Bay Interdisciplinary Review Team (CBIRT), only if it falls into one of the following use categories and meets all related criteria and requirements of this section and those of the underlying zoning district(s).

- a. A new or expanded water-dependent facility may be allowed within a Resource Protection Area provided that:
  - 1. It does not conflict with the Comprehensive Plan;
  - 2. It complies with the performance criteria set forth in this section;
  - 3. Any nonwater-dependent component is located outside of Resource Protection Areas; and
  - 4. Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.
- b. Redevelopment shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to the requirements contained herein, as well as erosion and sediment control requirements, and all applicable stormwater requirements of the City and other state and federal agencies.
- c. Roads and driveways not exempt in section 38-42 (r)(4), must comply with the provisions of this section. However, they may be constructed in or across Resource Protection Areas if each of the following conditions is met:
  - 1. The Chesapeake Bay Interdisciplinary Review Team makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
  - 2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the Resource Protection Area and adverse effects on water quality;
  - 3. The design and construction of the road or driveway satisfy all applicable criteria of this section, including submission of a water quality impact assessment; and
  - 4. The Chesapeake Bay Interdisciplinary Review Team reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with an application for development within a CBPA.

- d. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas, provided that:
    1. The Chesapeake Bay Interdisciplinary Review Team has conclusively established that the location of the facility within the Resource Protection Area is the optimum location;
    2. The size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both;
    3. The facility must be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase 1 modification to the City's program;
    4. All applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies;
    5. Approval must be received from the City of Falls Church prior to construction; and
    6. Routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed.
    7. It is not the intent of this section to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.
- (2) Permitted modifications to Resource Protection Area buffer areas. In order to maintain the functional value of the RPA buffer area, indigenous vegetation may be removed only as permitted by the City Arborist to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows. All requests for vegetation removal shall be submitted in writing to the City Arborist for evaluation.
- a. Trees may be pruned or removed as necessary subject to the written approval of the City Arborist to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
  - b. Any path shall be constructed and surfaced so as to effectively control erosion.
  - c. Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed subject to the written approval of the City Arborist, pursuant to sound horticultural practice incorporated into locally-adopted standards.
  - d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

(3) Permitted encroachments into the buffer area.

- a. When the application of the buffer area would result in the loss of a buildable area or a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed by the Chesapeake Bay Interdisciplinary Review Team, through an administrative process, and in accordance with the following criteria:
  1. Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
  2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
  3. The encroachment shall not extend into the seaward fifty (50) feet of the buffer area.
- b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be allowed by the Chesapeake Bay Interdisciplinary Review Team in accordance with the following criteria:
  1. The lot or parcel was created as a result of a legal process conducted in conformity with the City's subdivision regulations;
  2. Conditions or mitigation measures imposed through a previously approved exception shall be met;
  3. If the use of a best management practice was previously required, the best management practice shall be evaluated to determine if it continues to function effectively, and if necessary, the best management practice shall be reestablished or repaired and maintained as required; and
  4. The criteria in section 38-42(j)(3)a. shall be met.

(k) *General performance and development criteria within Chesapeake Bay Preservation Areas (Resource Management Areas and Resource Protection Areas).*

- (1) *Purpose and intent.* The following set of performance criteria establish the means to prevent a net increase in nonpoint source pollution from new development and achieve a ten (10) percent reduction in nonpoint source pollution from redevelopment. These criteria also set standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed.
- (2) *Performance criteria for development, redevelopment, or land disturbance.* The following criteria apply to all applications for development, redevelopment, or land disturbance within RMAs for projects that will disturb twenty-five hundred (2,500) square feet of land or more. The criteria also apply to all applications for development, redevelopment, or land disturbance within RPAs, regardless of the amount of land disturbance.

- a. All development, redevelopment, or land disturbance within RMAs that exceeds 2,500 square feet of land disturbance and all development, redevelopment, or land disturbance in the RPA, regardless of the amount of land disturbance, shall be subject to a Chesapeake Bay Preservation Area review process. This process will begin at the time of applications for site plans, subdivision plats, grading plans, building permits, demolition permits, or water quality impact assessments, in accordance with the applicable sections of the City's Code.
- b. Land disturbance shall be limited to the area necessary to provide for the proposed use or development. In accordance with an approved grading plan, the limits of land disturbance, including clearing or grading, shall be strictly defined. These limits shall be clearly shown on submitted plans and physically marked on the development site.
- c. Existing indigenous vegetation and trees shall be preserved to the maximum extent practicable, consistent with the proposed use or development, in accordance with Chapter 9, Erosion and Sediment Control, of the City Code, and as follows.
  1. Existing trees over two (2) inches in DBH and shrubs greater than five (5) feet in height shall be preserved outside the approved construction footprint consistent with the preceding paragraph. Diseased or weakened trees by age, storm, fire or other injury, may be required to be removed, by the City Arborist.
  2. The regulation of any Historic, Specimen, Street, Park, Memorial and other public trees shall be regulated in accordance with Chapter 35 "Trees, Shrubs and Weeds". This may include the bonding of these types of trees in situations where the critical root zone (CRZ) or canopies extend onto the site.
  3. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality best management practices (BMPs) and the installation of utilities.
  4. Tree preservation shall be in accordance with "The City of Falls Church Tree Preservation Standards and Specifications". A copy of the approved Plan and the specifications shall be kept on site at all times.
  5. Prior to clearing and grading, tree preservation fencing, consistent with the "City of Falls Church Tree Preservation Standards and Specifications", signs, or other such material may be required by the City Arborist. These preservation measures shall be installed to protect the critical root zone (CRZ) of any woody vegetation to be preserved on the site, as well as to protect the critical root zone (CRZ) of any woody vegetation trees on adjacent properties including right-of-ways that extend onto the site.

6. Tree preservation fencing shall remain in place throughout all phases of construction. Fencing shall not be removed until all construction equipment has left the site and written approval is granted by the City Arborist.
  7. Exceptions may be granted to allow access to the site and work area, with specific conditions established by the City Arborist.
  8. The storage of equipment, materials, debris, or fill shall not be allowed within the enclosure of the tree preservation fencing.
  9. The applicant shall submit in writing to the City Arborist a verification that all required tree preservation fencing and required preservation measures have been completed. The City Arborist shall inspect and approve this verification, within three (3) business days, prior to the issuance of any permits.
- d. Natural ground cover, especially woody vegetation, shall be used to the extent that is practicable, as it is most effective in holding soil in place and preventing site erosion. Adaptability to local conditions without the use of harmful fertilizers or pesticides, and the ability to filter runoff, make the use of indigenous vegetation preferable to non-indigenous plantings.
  - e. Land development shall minimize impervious cover associated with the proposed use or development. Keeping impervious cover to a minimum enhances rainwater infiltration and effectively reduces stormwater runoff potential.
  - f. Where the best management practices (BMPs) utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured by the City of Falls Church through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective.
  - g. Notwithstanding any other provisions of this section or exceptions or exemptions thereto, any land disturbing activity exceeding two thousand five hundred (2,500) square feet, including construction of all single-family houses, shall comply with the requirements of Chapter 9 and section 38-30(b), Tree Canopy Coverage Required on Residential Lots Zoned R1-A, Low Density and R1-B, Medium Density, of the City Code.
  - h. The following stormwater quality/pollutant removal requirements shall be met within the RPA and RMA. However, only certain types of development, uses, land disturbances, or redevelopment are permitted in the RPA as described in section 38-42(j)(1), and as such, some of the following requirements may not be applicable. Additional requirements specific to the RPA are described in section 38-42(l), (n), and (o).



1. Within the R-1A, Low Density Residential, and R-1B, Medium Residential, Zoning Districts, a maximum impervious land cover of thirty-five (35) percent is permitted with no other requirements for reducing pollutant load.
2. Within the R-C, Cluster Residence; R-TH, Townhouse Residence; R-M, Multifamily Residence; T-1, Transitional; B-1, Limited Business; B-2, Central Business; B-3, General Business; O-D, Official Design; and M-1, Light Industry Zoning Districts:
  - a. If the pre-development impervious land cover is less than or equal to fifty (50) percent, the post-development pollutant load shall be reduced to a load that is not greater than the pre-development pollutant load. See sections 38-34(l), (n), and (o) for regulations pertaining to the RPA.
  - b. If the pre-development impervious land cover is greater than fifty (50) percent, the post-development pollutant load shall be reduced to ninety (90) percent of the pre-development pollutant load. See sections 38-34(l), (n), and (o) for regulations pertaining to the RPA.
  - c. In cases where pollutant load reduction is required, it shall be achieved through the application of best management practices, and the 2002, or most recently published version of the Virginia Stormwater Management Handbook, method for calculating pollution load shall be utilized to determine the appropriate measures.
  - d. The Chesapeake Bay Interdisciplinary Review Team may waive or modify the pollutant load reduction requirement in cases where the sites originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
    1. In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
    2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution; and
    3. If existing best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Chesapeake Bay Interdisciplinary Review Team may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this section.
  - e. For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

3. The use of approved semi-pervious materials in lieu of impervious materials on a property may result in modified percentage impervious coverage calculations for that property. The City Engineer will maintain a list of approved semi-pervious materials and the relative ratios of imperviousness, and will apply said ratios to the overall impervious calculation for the subject property.
- i. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations, shall be obtained and evidence of such submitted to the City Engineer as part of the required development application submittals.
  - j. All stormwater management options utilized shall comply with this section and shall also be in compliance with the City's adopted stormwater management plan. For the purposes of this section, the "site" may include multiple projects that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements.
- (1) *Additional requirements for development within Resource Protection Areas.* In addition to the general performance and development criteria for CBPAs, the requirements in this section shall be met for any proposed land disturbance within an RPA.
    - (1) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs, including any development projects that are permitted within the RPA, as well as any RPA buffer modification or encroachment, in accordance with the provisions of this section. See section 38-42(o) for specific water quality impact requirements.
    - (2) Buffer area requirements. To minimize the adverse effects of human activities on the other components of the RPA, state waters, and aquatic life, a buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.
      - a. The buffer area shall be one-hundred (100) feet wide and located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. This distance shall be measured from the top of the streambank or the edge of stream if there is no bank. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the one-hundred (100) foot wide buffer area is never reduced in width.
      - b. The sections of water bodies for which the RPA shall be applied are generally labeled as such on the City's CBPA Map. However, precise delineation of the one-hundred (100) foot buffer area shall be prepared by the applicant pursuant to this section.

- c. The one-hundred (100) foot buffer area shall be deemed to achieve a seventy-five (75) percent reduction of sediments and a forty (40) percent reduction of nutrients. This must be demonstrated through the water quality impact assessment.
  - d. Where buffer areas are to be established, they shall consist of a mixture of shade trees, understory trees, shrubs and groundcovers. Density of the buffer shall be as described in the “Riparian Buffers Modification and Mitigation Guidance Manual” restoration and/or establishment tables.
  - e. Vegetation shall be chosen from the City of Falls Church recommended lists of trees and/or native floodplain species. Wetland plantings (including herbaceous plantings) and/or wetland seed mix shall be used where site conditions warrant. Plant materials and planting techniques shall be in accordance with “The City of Falls Church Specifications for Planting”.
- (m) *Application requirements for development projects within RMAs.* Any applicant for development of land, redevelopment, or land disturbance within the City must file an “Application for Development within a Chesapeake Bay Preservation Area” with the City’s Department of Environmental Services. This will begin the City’s process of review for development within these areas. These applications shall include the application form in addition to any required components of application for grading, stormwater, or building permits and the elements listed below in section 38-42(o), Water Quality Impact Assessment, if deemed necessary by the Chesapeake Bay Interdisciplinary Review Team, and a Landscape Conservation Plan as described below in section 38-42(m).

All development, redevelopment, or land disturbance subject to section 38-42, Chesapeake Bay Preservation Area Overlay District, shall also include a Landscape Conservation Plan as part of plan review and approval. No clearing or grading of any lot shall be permitted without an approved Landscape Conservation Plan prepared and/or certified by a landscape architect, arborist and/or horticulturalist. A Landscape Conservation Plan shall be a scaled drawing including the following components:

- (1) A Preliminary Vegetative Survey of all existing trees on the site, measuring at least two (2) inches in DBH and shrubs that are greater than five (5) feet in height.
  - a. A chart shall be provided showing common and botanical name, size, condition, life expectancy, and required preservation measures of all woody vegetation.
  - b. All trees shall be identified by an International Society of Arboriculture (ISA) certified arborist.
- (2) An Existing Vegetation Preservation Plan that shall illustrate any grade changes or other work adjacent to trees that would affect them adversely. Specifications shall be provided showing how grade, drainage and aeration will be

maintained around vegetation to be preserved to ensure the protection of existing trees and other woody vegetation during clearing, grading and all phases of construction.

- a. Locations of tree preservation fencing, root pruning and other required tree preservation measures shall be shown on the plan.
  - b. Proposed vegetation to be removed to create the desired construction footprint shall be clearly illustrated on the plan and labeled as “to be removed.” Vegetation to be preserved outside the building envelope shall be shown on the plan and labeled as “to be preserved”.
  - c. The location of the critical root zone (CRZ) of any vegetation shown on the plan or located on adjacent properties, including City right-of-ways, where the critical root zone (CRZ) extends onto the site, shall be shown on the plan.
  - d. Tree canopy coverage calculations provided by woody vegetation pre- and post-development and/or redevelopment on the site shall be shown on the plan along with the drip lines.
  - e. The “City of Falls Church Tree Standards and Specifications” shall be included on the plan.
  - f. Within the RPA buffer, trees and other woody vegetation to be removed for sight lines, vistas, access paths, best management practices, and shoreline stabilization projects shall be shown on the plan.
- (3) A Landscape Revegetation Plan that shall illustrate the proposed locations of vegetation that is required by this section and section 38-30 (b) Tree Canopy Coverage Required on Residential Lots Zoned R1-A, Low Density and R1-B Medium Density.
- a. A chart shall be provided listing canopy coverage calculations and any required replacement canopy coverage vegetation pursuant to section 38-30 (b) Tree Canopy Coverage Required on Residential Lots Zoned R1-A, Low Density and/or R1-B Medium Density.
  - b. A landscape schedule shall be provided that lists species, size, quantity, root condition and any credited tree canopy coverage pursuant to 38-30(b), shall be shown on the plan.
  - c. The planting of woody vegetation shall be in accordance with locally approved specifications and these specifications and details shall be included on the plan.
  - d. Any required RPA buffer shall be clearly delineated and any woody vegetation to be added to establish, supplement or replace existing vegetation within the RPA buffer, as required under this code, shall be shown on this plan.
- (4) In the event that any construction or work is performed in violation of the approved Landscape Conservation Plan, the City Arborist may issue a written notice to the responsible party to stop work. The notice to comply shall be immediately served upon the permit holder, by registered or certified mail to the address specified by the permit holder in his/her permit application. Such notice shall set forth specifically the measures needed to come into compliance with the plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he/she may be subject to revocation of the permit and/or

any cash bonds held by the City may be used at the direction of the City Arborist to correct the noted deficiencies; furthermore, he/she could be deemed to be in violation of this section and upon conviction could be subject to the penalties provided by this section. Each notification that has not been resolved within the specified timeframe in the stop work order shall constitute a separate violation.

- (5) In the event that the violation of the approved Landscape Conservation Plan was an encroachment or evidence of an encroachment into a tree preservation area, the applicant shall submit a Mitigation Plan subject to the approval of the City Arborist. This plan shall list remedial measures and the time within which such measures shall be completed by the applicant to ensure the continued preservation of the existing trees. This may include, but is not limited to, pruning, vertical mulching, and aerating. Bonding of the existing vegetation, in accordance with section 35-15, may be required by the City Arborist.
- (6) The City Arborist may require the replacement of any vegetation damaged in violation of the approved Landscape Conservation Plan as part of the Mitigation Plan. The size, species and quantity of the replacement trees shall be calculated by the City Arborist based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture. The required replacement trees shall be included in the "Mitigation Plan" submitted by the applicant. Bonding of the replacement vegetation, in accordance with section 38-29(j)(2), may be required by the City Arborist.
- (n) *Application requirements for development projects within RPAs.* Any applicant for development of land or land disturbance within a RPA must file an "Application for Development within a Chesapeake Bay Preservation Area" with the City's Department of Environmental Services. This will begin the City's process of review for development within these special areas. These applications shall include the application form in addition to any required components of application for site plan, grading, subdivision, stormwater, or building permits and the elements listed below in section 38-42 (o), Water Quality Impact Assessment, and a Landscape Conservation Plan as described in section 38-42(m).
- (o) *Water Quality Impact Assessment.* A water quality impact assessment shall be required for (i) any proposed land disturbance, development or redevelopment activity within the Resource Protection Area; (ii) any buffer encroachment as provided for in section 38-42 (j)(3); and (iii) for any other development in Resource Management Areas if regarded as appropriate by the Chesapeake Bay Interdisciplinary Review Team due to unique site characteristics or the intensity of the proposed use or development and its potential impact on water quality. The requirements for the water quality impact assessment will vary depending on the magnitude of the proposed development project.
- (1) The purpose of the water quality impact assessment is to identify the impacts of proposed development, redevelopment, or land disturbance on water quality, lands within the Resource Protection Area, and other environmentally sensitive lands, and

to determine specific measures for mitigation of these impacts. The water quality impact assessment must be of sufficient specificity to demonstrate compliance with the criteria of this section. See section 38-42(1) for specific buffer requirements.

- (2) A water quality assessment shall include a site drawing to scale which shows the following:
- a. Location of the components of the RPA and the one-hundred (100) foot buffer area measured from the top of the streambank or edge of stream when there is no bank. The location of the RPA line shall be prepared and certified by a land surveyor authorized to practice in the Commonwealth of Virginia;
  - b. Location and nature of the proposed encroachment into the RPA buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or other utilities;
  - c. Estimation of pre- and post-development impervious surfaces on the site and stormwater calculations;
  - d. Type and location of proposed best management practices to mitigate the proposed encroachment and the location of existing and proposed runoff outfalls or drainage pathways from the property, including the location of erosion and sediment control devices such as silt fencing, stormwater inlet protection, and temporary soil storage; and
  - e. Pollutant load calculations to display that the vegetative buffer and/or best management practice will reduce the sediment load by 75% and nutrient load by 40%.

(3) *Modifications to Certain Water Quality Impact Requirements.*

- a. Additional hydrogeological and other information may be required by the Chesapeake Bay Interdisciplinary Review Team if the size and scope of the proposed project is large enough to require additional analysis to ensure the protection of the CBPA.
- b. Applicants for development and redevelopment of land or land disturbance within the RPA may apply in writing to the City Engineer for a modification to the application requirements for a water quality impact assessment, described in section 38-42(o).

(4) *Submission and review requirements.*

- a. Five (5) copies of all site drawings and other applicable information as required by this section shall be submitted to the City Engineer for review by the Chesapeake Bay Interdisciplinary Review Team.
- b. All information required in this section shall be certified as complete and accurate by a professional engineer or a certified land surveyor.
- c. As part of any water quality impact assessment submittal, the Chesapeake Bay Interdisciplinary Review Team may require review by the Northern Virginia Regional Commission or the Chesapeake Bay Local Assistance Department. Any comments will be incorporated into the final review by the Chesapeake Bay Interdisciplinary Review Team, provided that such comments are provided within thirty (30) days of the request.

*(5) Evaluation procedure.*

- a. Upon the completed review of a water quality impact assessment, and the Landscape Conservation Plan, the Chesapeake Bay Interdisciplinary Review Team will determine if any proposed encroachment into the buffer area is consistent with the provisions of this section and make a finding based upon the following criteria:
  1. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
  2. Impervious surfaces are minimized;
  3. Proposed mitigation measures, including the Landscape Conservation Plan and site design, result in minimal disturbance to all components of the RPA, including the 100-foot buffer area;
  4. Proposed mitigation measures will work to retain all buffer area functions, pollutant removal, erosion and runoff control;
  5. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
  6. The development as proposed, meets the purpose and intent of this section;
  7. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality;
  8. Within any RPA, the proposed development is water-dependent or redevelopment; and
  9. The development will not result in significant disruption of the hydrology of the site.
- b. The Chesapeake Bay Interdisciplinary Review Team shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made based on the criteria listed above.

- c. The Chesapeake Bay Interdisciplinary Review Team shall find the proposal to be inconsistent with the purpose and intent of this section when the impacts created by the proposal cannot be mitigated.
- (p) *Installation and bonding requirements.* All development, land disturbance, and redevelopment in an RPA or RMA shall be subject to the bond and inspection provisions, pursuant to subsections (j) and (k) of section 38-29, Site Plans.
- (q) *Administrative responsibility and procedure.* Administration of the site plan process shall be in accordance with Chapter 38, section 38-29, Site Plans, or Chapter 31, Subdivision, of the City Code. The Chesapeake Bay Interdisciplinary Review Team (CBIRT) shall approve, approve subject to conditions, or disapprove any development application for property that is located within the City of Falls Church Resource Protection Area and any development application for property within the City of Falls Church Resource Management Area in accordance with this section. The CBIRT shall review and return the development plan review results to the applicant, including required conditions or modifications if the applicant wishes to proceed. If the applicant decides to proceed, the plans shall be modified by the applicant to reflect any required conditions or modifications and submitted for approval. The Chesapeake Bay Interdisciplinary Review Team will meet bimonthly. Public comment will be received at such meetings and outside of these meetings in writing. The CBIRT meetings will be advertised on the public notice boards within City Hall. Property owners within one-hundred fifty (150) feet of properties that are the subject of development applications to be reviewed by CBIRT, will be mailed notification of applicable CBIRT meetings.
- (r) *Administrative waivers and nonconformities, exemptions, and exceptions.*
  - (1) *Administrative waivers for nonconforming uses and noncomplying structures in Chesapeake Bay Preservation Areas. ...*
  - (2) *Reconstruction of pre-existing structures in Chesapeake Bay Preservation Areas....*
  - (3) *Administrative waivers for the expansion of pre-existing structures in Chesapeake Bay Preservation Areas. ...*
  - (4) *Exemptions for public utilities, railroads, public roads, and facilities.*
    - a. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (Section 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (Section 10.1-603.1 et seq. of the Code of Virginia); (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation; or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this section. The exemption of public roads and drives is further conditioned on the optimization of the road alignment and design, consistent with other applicable



requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area, and (ii) adverse effects on water quality.

- b. Construction, installation and maintenance of water, sewer, natural gas, and underground fiber-optic telecommunications and cable television lines owned, permitted, or both, by the City or regional service authority shall be exempt from the criteria in this part provided that:
  - 1. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
  - 2. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
  - 3. All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
  - 4. Any land disturbance exceeding an area of twenty-five (2,500) square feet complies with all erosion and sediment control requirements of this part.
- c. Exemptions in Resource Protection Areas. Passive recreation facilities such as boardwalks, trails and pathways; and historic preservation and archaeological activities may be exempt from the requirements of this section, as determined by the Chesapeake Bay Interdisciplinary Review Team, provided that any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control requirements of this part.

#### (5) Exceptions in Chesapeake Bay Preservation Areas

- a. Exception Requests Submitted to Chesapeake Bay Interdisciplinary Review Team for Planning Commission Review. Requests for exceptions to the requirements of section 38-42(j), *Permitted Development or Uses, Modifications, and Encroachments within Resource Protection Areas*, and requests for exceptions to modify non-conforming, or construct new non-attached accessory structures and uses in the RPA buffer, as noted in section 38-42(r)(3)g. shall be made in writing to the City Engineer. This request shall identify the impacts of the proposed exception on water quality and on lands within the Resource Protection Area through the performance of a water quality impact assessment, which complies with the provisions of section 38-42(o).

The Chesapeake Bay Interdisciplinary Review Team will forward the request and the water quality impact assessment to the Planning Commission for its consideration. The City of Falls Church shall notify the affected public of any such exception requests and the Planning Commission shall consider these requests in a public hearing in accordance with §15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

- b. Exception Requests Submitted to Chesapeake Bay Interdisciplinary Review Team for Administrative Review. Requests for exceptions to provisions other than section 38-42(j), *Permitted Development or Uses, Modifications, and*

*Encroachments within Resource Protection Areas*, and section 38-42(r)(3)g. exceptions to modify non-conforming, or construct new non-attached accessory structures and uses in the RPA buffer, may be made in writing to the City Engineer for administrative review by the Chesapeake Bay Interdisciplinary Review Team as described in section 38-42(q).

- c. Evaluation Criteria for Administrative or Planning Commission Review of Exception as applied to section 38-42(r)(5)a. and b. The Chesapeake Bay Interdisciplinary Review Team or the Planning Commission shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this section, and if the Chesapeake Bay Interdisciplinary Review Team or the Planning Commission finds that:
  1. Granting the exception will not confer upon the applicant any special privileges denied by this section to other property owners in the Overlay District;
  2. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
  3. The exception request is the minimum necessary to afford relief;
  4. The exception request will be in harmony with the purpose and intent of this section, not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and
  5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
  6. If the Planning Commission or Chesapeake Bay Interdisciplinary Review Team cannot make the required findings or refuses to grant the exception, the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision shall be returned to the applicant.

(s) *Appeals.* An appeal to the Planning Commission may be made by any person aggrieved by any decision of the City Arborist, City Engineer or Chesapeake Bay Interdisciplinary Review Team relative to the administration of this section. An appeal shall be made within fifteen (15) working days from the date of the issuance of the City Arborist's, City Engineer's or Chesapeake Bay Interdisciplinary Review Team's written order, by filing with the Planning Director a notice of appeal specifying the grounds thereof. The Planning Director shall then transmit to the Planning Commission the record upon which the appeal is based. The Planning Commission as part of their review should notify and seek advice and recommendations from appropriate Boards and Commissions. All decisions by the Planning Commission can be appealed to a court of record. The Planning Commission shall hear the appeal, and render a written decision within thirty (30) working days of receipt of the notice of appeal. An appeal stays all compliance with the action being appealed, unless the City Arborist or City Engineer

certifies to the Planning Commission that by reason of stated facts a stay would, in his/her opinion, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by the City Manager, or by a court of record, on application and on due cause shown.

An appeal by any person aggrieved by any decision of the Planning Commission relative to the administration of this section shall be made to a court of record. An appeal shall be made within thirty (30) working days from the date of the issuance of the Planning Commission's written decision by filing with a court of record.

- (t) *Violations and penalties; remedies.* Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this section or permits any such violation, or fails to comply with any of the requirements shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore the City Arborist and City Engineer, through the City Attorney, may apply to the circuit court of the County for injunctive relief to enjoin a violation or a threatened violation of this section.